(2)

CF0000063172

Single Bench (Criminal)

BEFORE THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 637 OF 2000.

APPELlant :: Vishnu Kumar S/O Kamaldas Dhratlahre, aged about 22 years, resident of village Kutela, P.S. Masturi, District Bilaspur.

(IN JAIL)

(Versus)

RESPONDENT :: THE STATE OF MADHYA PRADESH, through P.S. Masturi, Distt. Bilaspur.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(41)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal appeal No.637/2000

Vishnu Kumar
Vs.
State of Madhya Pradesh (Now Chhattisgarh)

JUDGMENT

Post for 17.01.2006

Sd/-
Sunil Kumar Sinha
Judge

(42)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal appeal No.637/2000

Vishnu Kumar
Vs.
State of Madhya Pradesh (Now Chhattisgarh)

Appearance:

Shri Mirza Kesar Baeg, counsel for the appellant.
Shri Vinod Shrivastava, Govt. Advocate for the State.

JUDGEMENT
(17.01.2006)

Sunil Kumar Sinha, J.

(1) The appellant calls in question the legality of the judgment of conviction and order of sentence dated 3.1.2000 passed by the Sessions Judge, Bilaspur, in Sessions Trial No.508/98, convicting the appellant u/s 376 of the I.P.C. and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo additional R.I. for two years.

(2) The brief facts are that the prosecutrix Smt. Manju (P.W.4), a young girl aged about 19 years was married to younger brother of the accused just one month prior to the date of incident. She was the resident of village Lariya and the husband and in-laws were the residents of village Kutela. After the marriage, she was residing in her in laws place in village Kutela. On 23.7.1998 she was not feeling well and for this reason she was asked by her mother-in-law and other family members to sleep in a different room separately and not to close the doors from in side. On this, she had gone to sleep in a different room separately and the other family members, like father-in-law, mother-in-law, brother-in-law (*Dewar*) and the husband were sleeping in the nearby Verandah. At about 12 in the mid night, she

found that some body had come to her bed. She could recognize that he was the brother in law (*Jeth*, the present appellant) and she at once resisted his action on which he gagged her mouth and ultimately after over-powering her committed forceful sexual intercourse against her. It has come in the prosecution case that when she had cried, her mother-in-law could notice it and she had said "*Ah Vishnu Dekh*". On this the appellant had scolded her mother-in-law saying that "*Chup Chap Jakar So Ja*", and no body could come to rescue her. Even after the sexual intercourse, she was forcefully detained there and when she found that the appellant has slept, she ran away from the house and went to the house of the neighbour namely Ram Bai (P.W.5) at 4 a.m. and narrated the story to her. On the next morning there was a village Panchayat in which two of the witnesses namely Malik Ram (P.W.1), Jhhaptan (P.W.6) were present. Before them also, the prosecutrix narrated the entire story and she denied to go to the house of the husband. However, on the next day of the Panchayat, the mother-in-law and the husband alongwith the present appellant (*Jeth*) went to the house of Ram Bai (P.W.5) and forcibly took the prosecutrix to their house. The allegations are that on the said night also, the appellant tried to sexually assault the prosecutrix and on her hue and cry, Malik Ram (P.W.1), Ram Bai, (P:W.5) and Jhhaptan (P.W.6) went there and saved her and thereafter only, the prosecutrix went to the Police Station on 26.7.1998 i.e., on the next morning at about 9.15 a.m. and lodged the F.I.R. vide Ex.P.8. The police station is at a distance of 20 Kms., from the village where the incident took place. The prosecutrix was medically examined by Dr. Smt. Shaila Milton (P.W.8), who found that there was a cut injury admeasuring 1" x ½" x ½" at the back portion of the left writ of the prosecutrix. Her vaginal examination was very painful as she was complaining severe pain extending upto thighs. On local examination, hymen was found

(44)

ruptured and there was swelling and the vagina was admitting two fingers with a great difficulty. The petty coat of the prosecutrix was also having blood like and semen like stains which were shown by her to (P.W.5) Smt. Ram Bai, at the first instance on 24.7.1998 when she was narrating the story to her and the same was also sent to the doctor for its examination and the doctor on her examination also marked blood like and semen like stains on the petty-coat which was advised for its chemical examination. The accused appellant was arrested on 27.7.1998 at about 12.30 p.m. He was also sent for medical examination. Dr. Hemant Dixit, (P.W.2), examined him who found two bluish marks (Neelangu Nishan) admeasuring 2cm x 1 cm and 3cm x 1cm on the back of the appellant.

(3) At the trial, the charges were framed u/s 376 of I.P.C. Relying on the testimony of the prosecutrix (P.W.4) supported by the testimony of (P.W.5) Ram Bai and the Doctor (P.W.8) Smt. Shaila Milton, the learned sessions judge held the appellant guilty of the aforesaid offence and convicted and sentenced him as afore-mentioned.

(4) Learned counsel for the appellant raised 3 points. His first submission was that there is delay of two days in lodging the F.I.R. and the same is fatal to the prosecution, The second submission was that the version of the prosecutrix is not reliable being unnatural. Alternatively, he also argued that the sentence awarded to the appellant is too harshand if the conviction is upheld, the same requires a consideration by this Court.

(5) So far as first point regarding delay in lodging the F.I.R. is concerned, it would appear that the alleged offence has been

committed at about 12.00 in the night of 23.7.1998, and the F.I.R. has been lodged at about 9.15 a.m. on 26.7.1998 in police station, Masturi, which is at a distance of 20 kms from the village. Learned counsel submitted that if the prosecutrix was in fact, victim of the crime, she should have lodged the report earlier and the delay in lodging the report makes the story doubtful.

(6) It has been held by the Apex Court in the matter of ***Sri Narayan Saha and another -Vs- State of Tripura,(2004) 7 SCC 775*** that mere delay in lodging the FIR is really of no consequence, if the reason is explained. Dealing the point of delay in the said cases, the Apex Court further held that in our country if the prosecutrix happened to be a married person, she will not do anything without informing her husband. The Apex Court also held that merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false.

(7) In the matter of ***State of Punjab -Vs- Ramdev Singh, (2004) 1 SCC 421***, the Apex Court laid down that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of

such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version.

(8) Therefore, the situation emerges that if there is some delay in lodging the FIR and reasons for the delay are explained in the case, the delay would be of no consequence. If we examine the scenario of the present case, it would appear on the evidence of the prosecutrix that even after performing the forceful sexual intercourse at about 12.00 hrs on 23.7.98, the appellant did not allow the prosecutrix to move from her bed and he constrained her to sleep with him but when he slept at about 4.00 a.m., the prosecutrix ran away from the room and went to the house of her neighbour namely Rambai (P.W. 5) and narrated her entire story. It has come in the evidence of Rambai that they were sleeping in the house at about 4.00 a.m., when the prosecutrix came over there and got them awaken and had narrated the story to all the family members who kept her with them. She has also deposed that the prosecutrix has shown her petty-coat to this witness which was blood stain. Looking to the situation, she kept the prosecutrix with her for a day and ultimately on the next day, the prosecutrix was forcefully taken by the husband and the appellant to their house. The allegations are that in the night of this day also, the appellant again tried to molest the prosecutrix on which she made hue and cry and thereafter, she could be saved by the villagers and ultimately a village *Panchayat* was conducted and then only the report was lodged in the morning of 26.7.98. It has also come in the evidence of prosecutrix that the husband of the prosecutrix was stopping her to lodge a report and was saying that she is making false allegations. If we see the sequence of the events which took place since 12.00 in the night of 23.7.98 till the morning at 9.15 a.m. of

26.7.98, it would appear that the delay in lodging the report was caused due to the fact that the husband of the prosecutrix was not believing her story and was constraining her for not lodging the report against his brother and ultimately when the second attempt was made by the appellant on the next day, the prosecutrix, even without taking assistance of her husband went to the police station and lodged the report. The conduct of the prosecutrix appears to be normal. In a lower middle class society, where all the family members including the husband are hostile to the normal conduct of the daughter-in-law, a newly wedded daughter-in-law can do nothing more in a remote new village, than what has been reasonably done by the prosecutrix at the earliest opportunity after the incident. On the basis of evidence of the prosecutrix (P.W. 4), Rambai (P.W. 5) and Malik Ram (P.W. 1), and in the scenario of sequence of events the delay in lodging the F.I.R., is explained and the same is of no consequence.

(9) Now coming to the second point about the reliability of the prosecution case, it has been held by the Apex Court in the matter of ***Ramdev Singh (Supra)*** that if the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children.

(10) In the matter of ***Sri Narayan Saha (Supra)***, the Apex Court held that the prosecutrix of the sex offence cannot be put on a par with accomplice. She is in fact, a victim of the crime and her evidence must receive the same weight as is attached to an injured witness. It can be accepted without corroboration if the court, keeping in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her, is satisfied that it can act on her evidence.

(11) In the matter of ***State of M.P. -Vs- Dayal Sahu, 2005 AIR SCW 4839,*** the Apex Court while dealing with the matter under Section 376 of the I.P.C. held that once the statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be passed only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances.

(12) Learned counsel for the appellant assailed the testimony of the prosecutrix on the ground that her version appears to be unnatural. His contention was that the story set-forth about the rape by the appellant is false because normally it would not be possible for a man to commit forceful sexual intercourse in the hours where the mother-in-law, father-in-law and the husband are also present and are sleeping in a nearby *Varandah* of the room, where the rape is alleged to have been committed. If we go through the evidence of the prosecutrix, it would appear that when for the first time, she could recognize that her brother-in-law had entered into the room and he has started over powering her for sexual intercourse, she had made a cry which was

(48)

noticed by her mother-in-law and then the mother-in-law asked the appellant, but she was scolded by him and the appellant said her "*Chup Chap Jakar So Ja*" and thereafter the sexual intercourse was committed. This version of the prosecutrix would show as to how helplessly she was residing in the house of her in-laws. This also goes to suggest that in fact, everyone in the family was dominated by the appellant and no one was daring to oppose the actions of the appellant even of rape by him against his younger brother's wife. Though the husband, mother-in-law and father-in-law have not been examined in this case, merely on account of this, the prosecutrix cannot be disbelieved. Why she will make a false report against the brother-in-law (Jeth) is unanswerable. More over, if everything was normal, then the prosecutrix was having no reason to go to the house of her neighbour in the morning at 4 'O' clock and to pray for a shelter therein and to narrate the entire story to them. Even otherwise also, if we look into the medical report of the prosecutrix as well as the appellant in which injuries were noticed by the Doctors,that too along with the immediate disclosure of the story to her neighbour also rules out a possibility of her being a consenting party. The facts and circumstances of the case would show that the appellant was enjoying a dominant position in the family and nobody could dare to stop him for the acts committed by him and the prosecutrix, when not rescued by her mother-in-law or husband or father-in-law on the date of incident, even after the mother-in-law has noticed the incident, in a very natural manner, she went to her neighbour and there she took shelter for a day. But she was again forcefully brought back by the appellant and her husband to their house and the appellant had again tried to molest her for the second time and when hue and cry were made, the persons of the village came over there to save the prosecutrix and then only the F.I.R. was lodged. The conduct of the

(49)

prosecutrix is normal and her evidence inspires confidence and acceptance by a court of law. The trial Court has rightly believed the testimony of the prosecutrix, though taking corroboration by the statement of P.W. 5, P.W. 1 and the Doctor. Therefore, this second argument advanced by the learned counsel for the appellant cannot be accepted.

(13) Now coming to the last point regarding the quantum of sentence, the provisions of Sub-section (1) of Section 376 I.P.C. provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down that the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 7 years. There is a similar proviso to sub-section (2) which empowers the Court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment.

(14) The learned Sessions Judge after considering the over-all situation and after placing full reliance on the testimony of the prosecutrix has awarded a term of 10 years R.I. along with fine of Rs 20,000/-. It is a case in which, a newly wedded 19 years old girl within one month of the marriage, has been subjected to rape by her brother-in-law (*Jeth*) that too in the matrimonial house where she was residing with the mother-in-law, father-in-law and the husband in a joint family but she could not be rescued at the time of commission of

rape by her brother-in-law and had to go for shelter to the house of the neighbour. In the said circumstance, if the aforesaid punishment has been awarded by the Sessions Court, it does not call for any interference by this Court.

(15) I do not find any merit in the appeal. The appeal is dismissed and the conviction and sentence awarded to the appellant are hereby confirmed.

Sd/-
Sunil Kumar Sinha
Judge